

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILE

05 APR 25 AM 11:11

ROBERT R. DI LORO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

JAMES DIRKANS,

Plaintiff,

vs.

No. 05-2096-M1/V

BILLY V. TURNER, et al.,

Defendants.

ORDER DIRECTING CLERK TO REFUND EXCESS FILING FEE
AND
ORDER DIRECTING PLAINTIFF TO SIGN THE COMPLAINT

Plaintiff James Dirkans, Tennessee Department of Correction ("TDOC") prisoner number 320684, who was, at the time he commenced this action, an inmate at the West Tennessee State Penitentiary ("WTSP") in Henning, Tennessee, filed a pro se complaint pursuant to 42 U.S.C. § 1983 on January 14, 2005, along with an application seeking leave to proceed in forma pauperis. The Court issued an order on February 24, 2005, denying leave to proceed in forma pauperis and directing the Plaintiff to remit the then-applicable \$150 civil filing fee within thirty days. Plaintiff paid the filing fee on March 17, 2005.¹ The Clerk shall record the

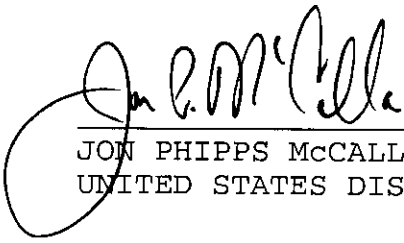
¹ Although the order plainly stated that Plaintiff was liable only for the \$150 filing fee, not the \$250 fee that took effect on March 7, 2005, Plaintiff remitted \$250. The Clerk is ORDERED to remit \$100 to the Plaintiff's (continued...)

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Defendants as Case Manager Billy Turner, WTSP Warden David Mills, and TDOC Commissioner Quenton White.

Rule 11(a) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party." The Complaint in this case is unsigned and, therefore, it fails to comply with Rule 11(a). The rule further provides that "[a]n unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Accordingly, the Plaintiff is ORDERED, within thirty (30) days of the date of entry of this order, to submit another copy of his Complaint bearing his original signature. Failure to comply with this order will result in the dismissal of this action without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute. If the action is dismissed on that basis, the \$150 filing fee, which accrued at the moment the action was filed, will not be refunded.

IT IS SO ORDERED this 22 day of April, 2005.



JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE

¹ (...continued)
inmate trust fund account.



Notice of Distribution

This notice confirms a copy of the document docketed as number 5 in case 2:05-CV-02096 was distributed by fax, mail, or direct printing on April 25, 2005 to the parties listed.

James Dirkans
SOUTH CENTRAL CORRECTIONAL CENTER
#320684
P.O. Box 279
Clifton, TN 38425--027

Honorable Jon McCalla
US DISTRICT COURT